

109TH CONGRESS  
1ST SESSION

# H. R. 1714

To amend title II of the Social Security Act to repeal the windfall elimination provision and protect the retirement of public servants.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 2005

Mr. BRADY of Texas (for himself, Mr. PAUL, Mr. CARTER, Mr. DOOLITTLE, Mr. DELAY, Ms. GRANGER, Mr. SHAW, Mr. SHAYS, Mr. NEUGEBAUER, Mr. SAM JOHNSON of Texas, Mr. EDWARDS, Mr. BURGESS, Mr. SIMMONS, Mrs. DAVIS of California, Mr. HINOJOSA, Mr. SESSIONS, Mr. MICHAUD, Mrs. MALONEY, Mr. HULSHOF, Mr. CALVERT, Mr. MCGOVERN, Mr. CULBERSON, Mr. LEWIS of Kentucky, Mr. BILIRAKIS, and Mr. RYAN of Wisconsin) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend title II of the Social Security Act to repeal the windfall elimination provision and protect the retirement of public servants.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Public Servant Retire-  
5   ment Protection Act of 2005”.

1 **SEC. 2. REPEAL OF CURRENT WINDFALL ELIMINATION**  
 2 **PROVISION.**

3 Paragraph (7) of section 215(a) of the Social Secu-  
 4 rity Act (42 U.S.C. 415(a)(7)) is repealed.

5 **SEC. 3. REPLACEMENT OF THE WINDFALL ELIMINATION**  
 6 **PROVISION WITH A FORMULA EQUALIZING**  
 7 **BENEFITS FOR CERTAIN INDIVIDUALS WITH**  
 8 **NON-COVERED EMPLOYMENT.**

9 (a) SUBSTITUTION OF PROPORTIONAL FORMULA FOR  
 10 FORMULA BASED ON COVERED PORTION OF PERIODIC  
 11 BENEFIT.—

12 (1) IN GENERAL.—Section 215(a) of the Social  
 13 Security Act (as amended by section 2 of this Act)  
 14 is amended further by inserting after paragraph (6)  
 15 the following new paragraph:

16 “(7)(A) In the case of an individual whose primary  
 17 insurance amount would be computed under paragraph  
 18 (1) of this subsection, who—

19 “(i) attains age 62 after 1985 (except where he  
 20 or she became entitled to a disability insurance ben-  
 21 efit before 1986 and remained so entitled in any of  
 22 the 12 months immediately preceding his or her at-  
 23 tainment of age 62), or

24 “(ii) would attain age 62 after 1985 and be-  
 25 comes eligible for a disability insurance benefit after  
 26 1985,

1 and who first becomes eligible after 1985 for a monthly  
2 periodic payment (including a payment determined under  
3 subparagraph (E), but excluding (I) a payment under the  
4 Railroad Retirement Act of 1974 or 1937, (II) a payment  
5 by a social security system of a foreign country based on  
6 an agreement concluded between the United States and  
7 such foreign country pursuant to section 233, and (III)  
8 a payment based wholly on service as a member of a uni-  
9 formed service (as defined in section 210(m)) which is  
10 based in whole or in part upon his or her earnings for  
11 service which did not constitute ‘employment’ as defined  
12 in section 210 for purposes of this title (hereafter in this  
13 paragraph and in subsection (d)(3) referred to as ‘non-  
14 covered service’), the primary insurance amount of that  
15 individual during his or her concurrent entitlement to such  
16 monthly periodic payment and to old-age or disability in-  
17 surance benefits shall be computed or recomputed under  
18 this paragraph.

19 “(B) The primary insurance amount of an individual  
20 described in subparagraph (A), as computed or recom-  
21 puted under this paragraph, shall be—

22 “(i) in the case of an individual who first per-  
23 forms noncovered service after the 12th calendar  
24 month following the date of the enactment of the  
25 Public Servant Retirement Protection Act of 2005,

1 the primary insurance amount determined under  
2 subparagraph (C), or

3 “(ii) in the case of an individual who has per-  
4 formed noncovered service during or before the 12th  
5 calendar month following the date of the enactment  
6 of the Public Servant Retirement Protection Act of  
7 2005, the larger of—

8 “(I) the primary insurance amount deter-  
9 mined under subparagraph (C), or

10 “(II) the primary insurance amount deter-  
11 mined under subparagraph (E).

12 “(C) An individual’s primary insurance amount de-  
13 termined under this subparagraph shall be the product de-  
14 rived by multiplying—

15 “(i) the individual’s primary insurance amount,  
16 as determined under paragraph (1) of this sub-  
17 section and subparagraph (D)(i) of this paragraph,  
18 by

19 “(ii) a fraction—

20 “(I) the numerator of which is the individ-  
21 ual’s average indexed monthly earnings (deter-  
22 mined without regard to subparagraph (D)(i)),  
23 and

24 “(II) the denominator of which is an  
25 amount equal to the individual’s average in-

1           dexed monthly earnings (as determined under  
2           subparagraph (D)(i)),  
3 rounded, if not a multiple of \$0.10, to the next lower mul-  
4 tiple of \$0.10.

5       “(D)(i) For purposes of determining an individual’s  
6 primary insurance amount pursuant to subparagraph  
7 (C)(i), the individual’s average indexed monthly earnings  
8 shall be determined by treating all service performed after  
9 1950 on which the individual’s monthly periodic payment  
10 referred to in subparagraph (A) is based (other than non-  
11 covered service as a member of a uniformed service (as  
12 defined in section 210(m))) as ‘employment’ as defined in  
13 section 210 for purposes of this title (together with all  
14 other service performed by such individual consisting of  
15 ‘employment’ as so defined).

16       “(ii) For purposes of determining average indexed  
17 monthly earnings as described in clause (i), the Commis-  
18 sioner of Social Security shall provide by regulation for  
19 a method for determining the amount of wages derived  
20 from service performed after 1950 on which the individ-  
21 ual’s periodic benefit is based and which is to be treated  
22 as ‘employment’ solely for purposes of clause (i). Such  
23 method shall provide for reliance on employment records  
24 which are provided to the Commissioner and which, as de-  
25 termined by the Commissioner, constitute a reasonable

1 basis for treatment of service as ‘employment’ for such  
2 purposes, together with such other information received  
3 by the Commissioner (including such documentary evi-  
4 dence of earnings derived from noncovered service as may  
5 be provided to the Commissioner by the individual) as the  
6 Commissioner may consider appropriate as a reasonable  
7 basis for treatment of service as ‘employment’ for such  
8 purposes. The Commissioner shall enter into such ar-  
9 rangements as are necessary and appropriate with the De-  
10 partment of the Treasury, the Department of Labor, other  
11 Federal agencies, and agencies of States and political sub-  
12 divisions thereof so as to secure satisfactory evidence of  
13 earnings for noncovered service described in subparagraph  
14 (A) for purposes of this clause and clauses (iii) and (iv).  
15 The Secretary of the Treasury, the Secretary of Labor,  
16 and the heads of all other Federal agencies are authorized  
17 and directed to cooperate with the Commissioner and, to  
18 the extent permitted by law, to provide such employment  
19 records and other information as the Commissioner may  
20 request for their assistance in the performance of the  
21 Commissioner’s functions under this clause and clauses  
22 (iii) and (iv).

23 “(iii) In any case in which satisfactory evidence of  
24 earnings for noncovered service which was performed by  
25 an individual during any year or portion of a year after

1 1977 is not otherwise available, the Commissioner may,  
2 for purposes of clause (ii), accept as satisfactory evidence  
3 of such individual's earnings for such noncovered service  
4 during such year or portion of a year reasonable extrapo-  
5 lations from available information with respect to earnings  
6 for noncovered service of such individual for periods imme-  
7 diately preceding and following such year or portion of a  
8 year.

9       “(iv) In any case in which satisfactory evidence of  
10 earnings for noncovered service which was performed by  
11 an individual during any period before 1978 is not other-  
12 wise available, the Commissioner may, for purposes of  
13 clause (ii), accept as satisfactory evidence of such individ-  
14 ual's earnings for such noncovered service during such pe-  
15 riod —

16               “(I) the individual's written attestation of such  
17 earnings, if such attestation is corroborated by at  
18 least 1 other individual who is knowledgeable of the  
19 relevant facts, or

20               “(II) available information regarding the aver-  
21 age earnings for noncovered service for the same pe-  
22 riod for individuals in similar positions in the same  
23 profession in the same State or political subdivision  
24 thereof, or, in any case in which such information is  
25 not available for such period, reasonable extrapo-

1       lations of average earnings for noncovered service  
2       for such individuals from periods immediately pre-  
3       ceding and following such period.

4       “(v) In any case described in subparagraph (B)(i),  
5       if the requirements of clause (ii) of this subparagraph are  
6       not met (after applying clauses (iii) and (iv)), the primary  
7       insurance amount of the individual shall be, notwith-  
8       standing subparagraph (B)(i), the primary insurance  
9       amount computed under subparagraph (E).

10       “(E)(i) For purposes of determining the primary in-  
11       surance amount under this subparagraph—

12               “(I) there shall first be computed an amount  
13       equal to the individual’s primary insurance amount  
14       under paragraph (1) of this subsection, except that  
15       for purposes of such computation the percentage of  
16       the individual’s average indexed monthly earnings  
17       established by subparagraph (A)(i) of paragraph (1)  
18       shall be the percent specified in clause (ii), and

19               “(II) there shall then be computed (without re-  
20       gard to this paragraph) a second amount, which  
21       shall be equal to the individual’s primary insurance  
22       amount under paragraph (1) of this subsection, ex-  
23       cept that such second amount shall be reduced by an  
24       amount equal to one-half of the portion of the  
25       monthly periodic payment which is attributable to



1 noncovered service performed after 1956 (with such  
2 attribution being based on the proportionate number  
3 of years of such noncovered service) and to which  
4 the individual is entitled (or is deemed to be enti-  
5 tled) for the initial month of his or her concurrent  
6 entitlement to such monthly periodic payment and  
7 old-age or disability insurance benefits.

8 An individual's primary insurance amount determined  
9 under this subparagraph shall be the larger of the two  
10 amounts computed under this clause (before the applica-  
11 tion of subsection (i)).

12 “(ii) For purposes of clause (i), the percent specified  
13 in this clause is—

14 “(I) 80.0 percent with respect to individuals  
15 who become eligible (as defined in paragraph (3)(B))  
16 for old-age insurance benefits (or became eligible as  
17 so defined for disability insurance benefits before at-  
18 taining age 62) in 1986;

19 “(II) 70.0 percent with respect to individuals  
20 who so become eligible in 1987;

21 “(III) 60.0 percent with respect to individuals  
22 who so become eligible in 1988;

23 “(IV) 50.0 percent with respect to individuals  
24 who so become eligible in 1989; and

1           “(V) 40.0 percent with respect to individuals  
2           who so become eligible in 1990 or thereafter.

3           “(F)(i) Any periodic payment which otherwise meets  
4 the requirements of subparagraph (A), but which is paid  
5 on other than a monthly basis, shall be allocated on a basis  
6 equivalent to a monthly payment (as determined by the  
7 Commissioner of Social Security), and such equivalent  
8 monthly payment shall constitute a monthly periodic pay-  
9 ment for purposes of this paragraph.

10          “(ii) In the case of an individual who has elected to  
11 receive a periodic payment that has been reduced so as  
12 to provide a survivor’s benefit to any other individual, the  
13 payment shall be deemed to be increased (for purposes of  
14 any computation under this paragraph or subsection  
15 (d)(3) by the amount of such reduction.

16          “(iii) For purposes of this paragraph, the term ‘peri-  
17 odic payment’ includes a payment payable in a lump sum  
18 if it is a commutation of, or a substitute for, periodic pay-  
19 ments.

20          “(G)(i) This paragraph shall not apply in the case  
21 of an individual who has 30 years or more of coverage.  
22 In the case of an individual who has more than 20 years  
23 of coverage but less than 30 years of coverage (as so de-  
24 fined), the percent specified in the applicable subdivision  
25 of subparagraph (E)(ii) shall (if such percent is smaller

1 than the applicable percent specified in the following table)  
 2 be deemed to be the applicable percent specified in the  
 3 following table:

<b>“If the number of such individual’s years of coverage (as so defined) is:</b>	<b>The applicable percent is:</b>
29 .....	85
28 .....	80
27 .....	75
26 .....	70
25 .....	65
24 .....	60
23 .....	55
22 .....	50
21 .....	45

4 “(ii) For purposes of clause (i), the term ‘year of cov-  
 5 erage’ shall have the meaning provided in paragraph  
 6 (1)(C)(ii), except that the reference to ‘15 percent’ therein  
 7 shall be deemed to be a reference to ‘25 percent’.

8 “(H) An individual’s primary insurance amount de-  
 9 termined under this paragraph shall be deemed to be com-  
 10 puted under paragraph (1) of this subsection for the pur-  
 11 pose of applying other provisions of this title.

12 “(I) This paragraph shall not apply in the case of  
 13 an individual whose eligibility for old-age or disability in-  
 14 surance benefits is based on an agreement concluded pur-  
 15 suant to section 233 or an individual who on January 1,  
 16 1984—

17 “(i) is an employee performing service to which  
 18 social security coverage is extended on that date  
 19 solely by reason of the amendments made by section  
 20 101 of the Social Security Amendments of 1983; or

1           “(ii) is an employee of a nonprofit organization  
 2           which (on December 31, 1983) did not have in effect  
 3           a waiver certificate under section 3121(k) of the In-  
 4           ternal Revenue Code of 1954 and to the employees  
 5           of which social security coverage is extended on that  
 6           date solely by reason of the amendments made by  
 7           section 102 of that Act, unless social security cov-  
 8           erage had previously extended to service performed  
 9           by such individual as an employee of that organiza-  
 10          tion under a waiver certificate which was subse-  
 11          quently (prior to December 31, 1983) terminated.”.

12           (2) CONFORMING AMENDMENTS.—

13           (A) Section 215(d)(3) of such Act (42  
 14           U.S.C. 415(d)(3)) is amended—

15                   (i) by striking “subsection (a)(7)(C)”  
 16                   each place it appears and inserting “sub-  
 17                   section (a)(7)(F)”;

18                   (ii) by striking “subparagraph (E)”  
 19                   and inserting “subparagraph (I)”; and

20                   (iii) by striking “subparagraph (D)”  
 21                   and inserting “subparagraph (G)(i)”.

22           (B) Section 215(f)(9)(A) of such Act (42  
 23           U.S.C. 415(f)(9)(A)) is amended by striking  
 24           “(a)(7)(C)” and inserting “(a)(7)(F)”.

1 **SEC. 4. EFFECTIVE DATE.**

2       The amendments made by this Act shall apply with  
3 respect to monthly insurance benefits for months com-  
4 mencing with or after the 12th calendar month following  
5 the date of the enactment of this Act. Notwithstanding  
6 section 215(f) of the Social Security Act, the Commis-  
7 sioner of Social Security shall recompute primary insur-  
8 ance amounts to the extent necessary to carry out the  
9 amendments made by this Act.

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